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June 12, 2003

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, MA 02110

Re: D.T.E. 03-47, Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company, NSTAR Gas Company, Pension/PBOP Adjustment Mechanism Tariff Filing

Dear Secretary Cottrell:

Enclosed for filing in the above-referenced matter are: (1) the Opposition of Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company and NSTAR Gas Company to the Attorney General's Motion to Dismiss; and (2) the Opposition of Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company and NSTAR Gas Company to the Attorney General's Motion to Stay Proceedings Pending Resolution of the Motion to Dismiss.

Thank you for your attention to this matter.

Sincerely,

Robert J. Keegan

Enclosures

cc: Service List

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Boston Edison Company Cambridge Electric Light Company Commonwealth Electric Company NSTAR Gas Company	)	D.T.E. 03-47

CERTIFICATE OF SERVICE

I certify that I have this day served the foregoing document upon the Department of Telecommunications and parties of record in accordance with the requirements of 220 C.M.R. 1.05 (Department's Rules of Practice and Procedures).

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Dated: June 12, 2003

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Boston Edison Company Cambridge Electric Light Company Commonwealth Electric Company NSTAR Gas Company	)	D.T.E. 03-47

OPPOSITION OF BOSTON EDISON COMPANY, CAMBRIDGE ELECTRIC LIGHT COMPANY, COMMONWEALTH ELECTRIC COMPANY AND NSTAR GAS COMPANY TO ATTORNEY GENERAL'S MOTION TO DISMISS

Submitted by:

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Dated: June 12, 2003

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I. INTRODUCTION

On April 16, 2003, Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company and NSTAR Gas Company (together, "NSTAR" or the "Company") submitted tariffs to the Department of Telecommunications and Energy (the "Department") for approval of a reconciliation-adjustment mechanism to provide for the recovery of costs associated with the Company's obligations to provide its employees pension benefits and post-retirement benefits other than pensions ("PBOP"). On April 23, 2003, the Department suspended the effective date of the tariffs until August 1, 2003, in order to investigate the propriety of the Company's proposed tariffs.

The Company's proposal is intended to give effect to the accounting treatment approved by the Department in Approved Request For Accounting Ruling, D.T.E. 02-78 (2002), through a reconciling ratemaking mechanism that will provide rate stability and ensure that customers pay no more and no less than the amounts needed to extend pension and PBOP benefits to the Company's employees. See Company Initial Filing Letter at 1-2 (April 16, 2003). In addition, this mechanism will ensure that the financial

integrity of the Company is not impaired by financial-reporting requirements and cash-flow issues that arise from the extreme volatility of pension and PBOP funding obligations.[1]

In his Motion to Dismiss, the Attorney General broadly alleges five grounds in an attempt to support his request for the extraordinary relief of dismissal. As described below, even if there were any merit to the Attorney General's arguments (which there is not), none of the grounds would meet the standard necessary to dismiss the case before hearings and final briefing. The Attorney General's motion fails to demonstrate that the Company has asserted no facts which, if proven, would support the Company's request for approval of its pension/PBOP mechanism. Indeed, the contrary is demonstrated by the Company's filing, which itself provides a comprehensive body of evidence, that, at a minimum, asserts facts that demonstrate that the Company's proposed pension/PBOP adjustment mechanism is appropriate and should be approved as consistent with sound regulatory policy. In the context of a motion to dismiss, the Company has certainly raised legitimate questions of fact that the Department must consider substantively and decide through the hearing process. Although the Department will, at the conclusion of this case, rule on a variety of factual and regulatory issues raised by the Attorney General, as a matter of law, the Department must reject the Attorney General's Motion to Dismiss.

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[1] It should be noted that the Company's auditors have concluded that the implementation of a specific pension/PBOP rate-recovery mechanism is required in order to avoid a charge against equity and negative earnings impacts (see, e.g., Exh. NSTAR-JJJ at 2, IR-DTE-1-1).

II. STANDARD OF REVIEW

The Department's standard of review for ruling on a motion to dismiss is articulated in Riverside Steam & Electric Company, D.P.U. 88-123, at 26-27 (1988) ("Riverside"). Cambridge Electric Light Company/MIT, D.P.U. 94-101/95-36, at 10 (1995). In determining whether to grant a motion to dismiss, the Department takes the assertions of fact included in the filings and pleadings as true and construes them in favor of the non-moving party. Riverside, at 26-27. Dismissal will be granted by the Department only if it appears that the non-moving party would be entitled to no relief under any statement of facts that could be proven in support of its claim. Id. In ruling on such a motion, the Department is also guided by the principles and procedures underlying the Massachusetts Rules of Civil Procedure. See 220 CMR § 1.06(c).

A complaint should not be dismissed because it asserts a novel theory of liability or even "improbable" facts. Municipal Light Co. of Ashburnham v. Commonwealth, 34 Mass. App. Ct. 162, 166, 608 N.E. 2d 743, 746, *review denied*, 616 N.E.2d 469, 415 Mass. 1102, *certiorari denied*, 114 S.Ct. 187, 126 L.Ed.2d 146, *citing* Coolidge Bank & Trust Co. v. First Ipswich Co., 9 Mass. App. Ct. 369, 370; 401 N.E. 2d 165 (1980). Jenkins v. Jenkins, 15 Mass. App. Ct. 934, 444 N.E. 2d 1301 (1983).

> It is familiar doctrine that a complaint can be dismissed for failure to state a claim for which relief can be granted only if a reading of the complaint establishes beyond doubt that the facts alleged, accepting them as true and drawing all inferences in the plaintiff's favor, do not add up to a cause of action which the law recognizes. The plaintiff has to plead itself out of court.

Id., citing Nader v. Citron, 372 Mass. at 98, 360 N.E.2d 870. Connerty v Metropolitan Dist. Commn., 398 Mass. 140, 143, 495 N.E. 2d 840 (1986). New England Insulation Co. v.. General Dynamics Co., 26 Mass. App. Ct. 28, 29-30, 522 N.E.2d 997 (1988). It is

fundamental that the burden on the party moving for dismissal is a heavy one. See Gibbs Ford, Inc. v. United Truck Leasing Corp., 399 Mass. 8, 13, 502 N.E. 2d 508 (1987).

III. ARGUMENT

A. The Attorney General's Arguments That the Proposal Should Be Dismissed Based as a Single-Issue Rate Case Is Erroneous as a Matter of Fact and Law.

The Attorney General argues that the Department should dismiss the Company's proposed Pension/PBOP reconciliation mechanism because it violates the "doctrine against single-issue rate cases" (Attorney General Motion at 3-5). The Attorney General states that the single-issue rate case doctrine looks with disfavor upon increasing base rates to account for a cost increase associated with a single item of expense (id. at 4). The Attorney General's argument is without merit because the Company's proposal does not constitute a single-issue rate case, and even if it did, there is no legal bar to Department approval that would warrant dismissal.

NSTAR is not seeking to increase base rates, but rather is requesting approval of a fully reconciling adjustment mechanism that functions *outside* of base rates. As described, infra, this type of mechanism has been approved by the Department numerous times in the past, has been ratified by the Supreme Judicial Court (the "SJC") and has been codified by the Legislature.[2] The pension/PBOP adjustment mechanism will

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[2] The use of a reconciliation mechanism for the recovery of utility costs outside of base rates has been Department-approved ratemaking practice for over 50 years dating back as early as the Department's approval of a fuel clause in connection with gas manufacturing. Worcester Gas Light Company, 9 PUR 3d 152, at 155 (1955), citing Boston Consolidated Gas Company v. Department of Public Utilities, 321 Mass. 259, 72 NE2d 543 (1947). Since then, the Department has relied on similar reconciliation adjustment mechanisms on numerous occasions involving, among other things, the recovery of electric fuel costs, environmental response costs, FERC Order 636 transition costs, and power plant conversion costs to conserve oil. Table 1, attached, identifies a variety of utility cost categories that the Department has approved for recovery either through a

(footnote continued...)

reconcile actual pension/PBOP expense amounts booked by the Company (both upwards and downwards) with pension/PBOP amounts included in rates. Base rates, as approved by the Department, are intended to reflect a representative level of historical cost (reflective of a "normal" test year) that a utility incurs to provide service to customers. The harm sought to be avoided by the Department by "disfavoring" single-issue rate cases arises when a utility under the Department's jurisdiction seeks to increase its base rates (on a "permanent" basis) because of a single cost element that has increased, without examining potential other offsetting reductions in its costs that would eliminate or reduce the need for the requested base rate increase. This case will not increase base rates, but rather is designed to establish a fully reconciling (i.e., a reconciliation to actual dollars booked by the Company) adjustment mechanism *outside* of base rates. As described infra, the Department allows the reconciliation of a cost component through the use of a fully reconciling cost recovery mechanism *outside* of base rates under a variety of circumstances.

Even if the Company had made a proposal that was construed as a single-issue rate case (which it has not), such a request would not constitute legal grounds for summary dismissal.[3] Notably, the Attorney General acknowledges that his single-issue

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(...footnote continued)

reconciliation mechanism outside of base rates or as a single adjustment to base rates (e.g., changes in federal income tax rules and changes in depreciation requirements).

[3] The Attorney General suggests that the Company's proposal would decrease the Company's cost of capital because of the reduced operating risk attributable to a pension/PBOP reconciliation mechanism (Attorney General Motion to Dismiss at 4). The Attorney General also asserts that the Company has failed to consider its earlier projected savings resulting from merger-related synergies (id.). According to the Attorney General, these decreases may fully offset any increase in pension and PBOP costs, eliminating the need for the Company's proposed adjustment mechanism in this case (id. at 5). The Attorney General's argument is off the mark, however,

(footnote continued...)

rate case challenge does not, as a matter of law, bar the Department's ability to approve the Company's pension/PBOP mechanism in this case (the Department "allows single-issue rate adjustments in limited and extraordinary circumstances") (Attorney General Motion to Dismiss at 4). This principle has been established by the Department for over 20 years:

> **It is permissible** for the Company to make a limited filing for the recovery of revenues to offset increases for certain discrete categories of expense, that issue having been decided in Cambridge Electric Light Company, D.P.U. 490 (1981).

New England Telephone and Telegraph Company, D.P.U. 859, at 6 (1982) (emphasis added). The Department recently affirmed its discretion in matters relating to single-issue rate cases, finding conclusively that "no absolute bar" applied. Provision of Default Service, D.T.E. 02-40-B at 20 (2003). Instead, the Department held that the judgment of the Department must be exercised on a case-by-case basis in light of the exigency of the circumstances. Id. "The judgment on such petitions is necessarily circumstantial, concerning, as it must, the exigency of the problem and the importance of potential relief." Id.

Therefore, the Attorney General's assertion that the Company's proposal constitutes a single-issue rate case is incorrect; and, moreover, even if the Company's

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(...footnote continued)

because he considers potential (and speculative) savings since the merger while excluding from his consideration those additional costs (e.g., capital improvements, health benefits, restructuring- and information-systems upgrades) that have also been incurred by the Company since the merger. If the Attorney General were to believe that the Company will be over-earning after implementation of the Company's pension/PBOP mechanism, the Attorney General has the authority, pursuant to G.L. c. 164, § 93, to require the Department to conduct a hearing on the Company's rates. The Department has jurisdiction to conduct an investigation of a company's rates if it has reason to believe that a company's earnings are excessive. NSTAR, D.T.E. 99-19, at 24.

proposal represented single-issue ratemaking (which it does not), the Department has the legal authority, consistent with applicable precedent, to permit it in appropriate circumstances. Accordingly, there is no legal grounds for dismissal based on the assertions about single-issue ratemaking.

B. A Reconciliation Mechanism Is Appropriate Where Certain Identifiable Circumstances Are Present.

For decades, legal scholars have recognized the importance of adjustment clauses that operate outside of base rates because of the difficulty of base rates to reflect the cyclical changes that occur in the economy in a timely matter.

> One of the major problems in public utility regulation is the reconciliation of fixed rates to the pressures and demands of a fluctuating economy. Failure to make such a reconciliation results in unreasonably high rates in periods of economic recession, and hardship to the utility (in a few cases threatening discontinuance of service) during inflationary cycles. These effects are the twin offspring of the inevitable lag between general price changes and regulatory approval of changes in utility rates. *The simplest and most widespread solution of the problem is the use of automatic rate adjustments, whereby the rates are allowed to vary automatically with changes in operating costs, prices of basic raw materials, or independently-published price indices.*

Trigg, *Escalator Clauses in Public Utility Rate Schedules*, 106 U.Pa.L.Rev. 964 (1958) (emphasis added). More than 25 years ago, the SJC also considered the main historical purpose of cost adjustment clauses, and stated the advantages that such clauses provide by reconciliation of costs outside the calculation of traditional base rates.

> Rate proceedings have been notoriously slow as well as expensive. . . . Therefore the demand arose to build into the rates, provisions by which increases in certain costs to the utilities (and, to be fair, decreases as well) would in accordance with formula[e] be automatically passed on to the consumers as fluctuations of the charges to them, without the burden and expense to utilities – which would ultimately fall upon consumers – of instituting and carrying out separate rate proceedings to justify the varying charges.

Consumers Organization for Fair Energy Equality v. Department of Public Utilities, 368 Mass. 599, at 606 (1975). The SJC reasoned that automatic adjustment held particular appeal "where the utility had only minimal bargaining power about the particular items of cost (e.g., a gas company purchasing natural gas from a supplier whose rates were fixed by the Federal Power Commission) . . ." Id.

Similarly, the Attorney General has previously recognized the benefits of adopting a reconciliation mechanism. According to the Attorney General, the characteristics of utility costs included in reconciliation adjustment mechanisms are those that:

> (1) are a significant part of a utility's cost of doing business; (2) vary significantly over relatively short time intervals; and (3) are substantially not within a utility's control.

Bay State Gas Company, D.P.U. 94-16, at 41 (1994).

The Company's pension/PBOP estimated expense for 2003 ($64.4 million (IR-1-DTE-3(Rev))) is a significant amount for a company the size of NSTAR. This category of expense is highly volatile because of the way that accounting standards require the Company to account for changes that occur in the economy from year to year, primarily changes in financial markets that affect greatly the Company's overall return on its pension/PBOP investments. These, and other related factors, are outside of the Company's control. Accordingly, for the benefit of stability and efficiency of the Company's rates, it is imperative that it be permitted to establish a pension/PBOP reconciliation mechanism.

The Attorney General's stated criteria for the use of a reconciliation mechanism, as described in Bay State Gas Company, D.P.U. 94-16 (1994), are aligned closely with

the criteria stated by the Department when it first established a cost-of-gas-adjustment mechanism for pipeline gas costs several years after interstate pipelines were first constructed to serve New England. Worcester Gas Light Company, 9 P.U.R. 3d 152 (1955) ("Worcester"). In Worcester, the Department stated that the principal reasons it allowed such an adjustment clause was the realization that "fuel prices were and are relatively volatile" and that such fuel costs represented a substantial cost. Id. at 155. A further consideration offered by the Department was the fact that "a relatively slight increase in the cost per Mcf of purchased gas would, even after taxes, materially affect the companies' net earnings." Id. In addition, the Department consideration in favor of approving the adjustment clause was attributable to the generic effect such costs might have on other utilities in the Commonwealth. The approval of the reconciliation mechanism would therefore avoid substantial cost and delay. The Department would otherwise have had to engage itself in:

> a very long and protracted series of rate hearings occupying a substantial length of time, involving substantial expense to both the companies and to the [C]ommonwealth and orders in which would necessarily, unless they were all issued at one time, prejudice one company as against another. It does not seem to us that either good regulation or common sense requires this result . . .

Id. at 156. Accordingly, the following four factors, identified by the Department, provide the regulatory foundation for approving utility adjustment mechanisms outside of base rates:

1. The cost component is relatively volatile over time;
2. The cost component represents a substantial overall cost to the company;
3. The cost component could have a material effect on the company's earnings; and

4. The cost component has potential generic implications for other regulated utilities in Massachusetts.

These four elements are embedded firmly in the Company's pension/PBOP expense. Without a separate reconciliation mechanism to account for such costs, the Company will be in an ongoing volatile earnings environment that will have an adverse effect on the Company and its customers. Since the implementation of accounting rules that mandate an accrual of pensions and PBOPs for employees (rather than "pay as you go" expensing when employees retire), the Department has struggled with ratemaking approaches to establish a representative level of expenses in base rates. See Exhibit NSTAR-JJJ at 23-27 (and cases cited therein). This ratemaking challenge is a direct result of the characteristics of the expenses, which fit the Department's standards for establishing a recovery mechanism outside of general rate cases. As presented in the Company's prefiled testimony, which is summarized below, the way in which accounting standards mandate the Company to treat its pension/PBOP costs, leads to the conclusion that the nature of such expenses meets each of the Department's four criteria for the development of a separate reconciliation mechanism.

1. The Volatility of Pension/PBOP Expense

Mr. Judge, Senior Vice President, Treasurer and Chief Financial Officer of NSTAR and its four regulated distribution companies, submitted testimony that describes the way in which the application of mandated accounting standards, when coupled with financial market changes, creates large swings in what must be booked for accounting purposes. For example, in addition to the Company's consideration of the projected pension and PBOP obligations to its employees and retirees, the actual trust asset balance must be considered to calculate the net funded status and the net expense of the

Company's pension/PBOP plans. See Exhibit NSTAR-JJJ, at 9. The expected long-term rate of return on the assets is calculated each year as an offset to the plans' costs. However, as Mr. Judge states:

> many of the FASB-required underlying assumptions and projections (especially with respect to future market returns and interest rates) can be very volatile and uncertain, and have significant impacts on the funded status of pension and PBOP plans for financial reporting purposes. These assumptions also drive the accounting that is required to reflect the funded status of a company's pension plan.

Id. at 9-10. As a result of this volatility, as reflected by equity market declines and falling interest rates, the Company sought and received Department approval to defer, and record as a regulatory asset or liability the difference between the level of pension and PBOP expenses that are included in rates and the amounts that must be booked in accordance with SFAS 87 and SFAS 106. The expenses that will be booked under SFAS 87 and SFAS 106 in 2003 and thereafter will be significantly greater than the levels previously booked by the Company. Company Letter requesting accounting ruling in D.T.E. 02-78, at 2 (November 27, 2002).

2. The Substantial Cost of Pension/PBOP Expense

NSTAR sponsors the NSTAR Pension Plan, a defined benefit pension plan that covers approximately 3,000 employees and 4,000 retirees and their beneficiaries. Exhibit NSTAR-JJJ, at 4. In addition, the Company provides post-retirement health and life-insurance benefits to its retirees under the Group Welfare Benefits Plan for Retirees of NSTAR (the "PBOP Plan"). Id. The SFAS 87 and SFAS 106 level of expenses for 2003 is projected to be over $64 million. For a company the size of NSTAR, this is a substantial cost, by any reasonable measure. Moreover, as of December 31, 2002, the pension and PBOP plans have a calculated financial obligation (known as its

Accumulated Benefit Obligation or "ABO") of $844 million and $572 million, respectively. As a result of the Department's Order in D.T.E. 02-78, NSTAR recorded a regulatory asset in lieu of a charge to equity of $434.7 million. Id. at 15. Accordingly, the financial impact of the Company's pension/PBOP obligation is enormous.

3. Pension/PBOP's Material Effect on Earnings

The material effect of the magnitude and volatility of the Company's Pension/PBOP costs on earnings (as described in the Company's filing) is both obvious and dramatic. Additionally, if the Company is required to remove from its books the regulatory asset relating to its pension and PBOP obligations and take a charge against equity, there will be negative impacts on earnings, stock price, bond ratings and increased costs to customers.

4. The Generic Character of Pension/PBOP's Effect on Utilities

Since the institution of SFAS 87 and SFAS 106, the Department has addressed the generic issue of trying to establish a reasonable method of including a representative level of pension and PBOP expenses in base rates. The difficulties of this endeavor have been underscored by recent events in financial markets. Utilities across Massachusetts and throughout the country are experiencing the same adverse effects of market volatility and declining interest rates that have caused significant reductions in the asset value of their pension/PBOP plans. The generic nature of the current circumstances is clear and calls for a regulatory change implementing a different ratemaking mechanism that will provide rate stability, ensure that customers pay no more or no less than the amounts needed to extend pension and PBOP benefits to employees, and ensure that the financial integrity of distribution companies is not impaired by financial reporting requirements

and cash-flow issues that arise from the extreme volatility of pension and PBOP funding obligations.

The Company's filing contains evidence to support all of these assertions, and the Department must consider the substantive issues raised by the tariff proposal. There is no legal bar to the approval of the proposed adjustment mechanism (indeed the Company has met the appropriate standard for approval), and, therefore, the Attorney General has failed to meet the standard for dismissal.

C. The Company's Proposed Pension/PBOP Mechanism Does Not Violate the Department's Merger Reporting Directives.

The Attorney General argues that the Company's pension/PBOP mechanism should be dismissed because the Company has failed to submit two filings that the Department ordered in the BECo/ComEnergy merger decision, D.P.U. 99-19 (2000) – a one-time report of cost-savings measures and an allocation report (Attorney General Motion to Dismiss at 6-7). Citing the Department's requirement that these reports be filed within 90 days of the earlier of the end of the rate freeze or a "future rate proceeding", the Attorney General contends that the Company's filing is a "future rate proceeding" (id. at 7, *citing* NSTAR, D.T.E. 99-19, at 86). The Attorney General's argument is without merit because the rate-freeze period is neither over, nor has a "future rate proceeding" as contemplated by D.T.E. 99-19 been initiated by the Company.

The Company will file the reports as required by the Department's merger order, (i.e., no later than 90 days after the end of the rate-freeze period). However, the Attorney General's position that the Company's filing in this case constitutes a "future rate proceeding" suggests that the Attorney General would have sought the Company's reports long ago, as the Company has made numerous tariff filings since the merger case

(e.g., the full set of Company tariffs associated with annual transition reconciliation and transmission charges). Yet, no such objection has been raised previously by the Attorney General. Clearly, the Department's requirement that the reports be filed at the time of a future rate proceeding is intended to reflect the filing of a general base rate case, which the Company's filing is not. If the Company filed a general rate case, which could be filed before the end of the four-year rate-freeze period,[4] the synergies report would be required to determine whether the costs of the merger (which are to be included in new rates) are offset by merger-related savings.

Accordingly, the fact that the Company has not yet submitted its report on merger savings is not grounds for dismissal of this proposal.

D. The Company's Pension/PBOP Mechanism Does Not Violate the Four-Year Rate Freeze.

The Attorney General argues that the Department should dismiss the Company's filing because it violates the existing rate freeze from the NSTAR merger case, D.T.E. 99-19 (1999) (Attorney General Motion to Dismiss at 2). According to the Attorney General, the rate freeze does not expire until September 2003 while NSTAR proposes tariffs for effect May 1, 2003 (which have been suspended by the Department until August 1, 2003) that would allow recovery for expenses incurred in 2002 and 2003 (id.). The Attorney General's argument is without merit because the Company's pension/PBOP tariff would not result in any rate change until January 1, 2004, *after* the rate freeze is over for months.

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[4] Under the terms of the approved Rate Plan, the Company would not raise base distribution rates for a four-year period beginning with the date of the merger. D.T.E. 99-19, at 13. A rate case

(footnote continued...)

The Department's suspension of the tariffs until August 1, 2003 is not germane to the expiration of the rate freeze in September 2003. Each of the Company's Pension/PBOP Adjustment Mechanism Tariffs provides for an annual adjustment factor that takes effect on the first day of each calendar year.

> 1.03 Effective Date of Annual Adjustment Factor
>
> The date on which the annual Pension/PBOP Adjustment Factor ("PAF") becomes effective shall be the first day of each calendar year, unless otherwise ordered by the Department. The Company shall submit PAF filings as outlined in Section 1.06 of this tariff at least 30 days before the filing is to take effect.

Accordingly, the tariffs will not cause any rates to change before the expiration of the rate freeze.

Nor does the recovery of pension/PBOP expenses incurred in 2002 and 2003 violate the rate freeze or principles of retroactive ratemaking. As a result of current FASB accounting requirements for pension and PBOP expenses, the Company's pension/PBOP expenses are not booked on a "pay as you go" basis, but are based on projections of future financial obligations using a variety of actuarial and investment return assumptions (Exh. NSTAR-JJJ at 9-12). Therefore, the Company's "current" pension/PBOP costs are always a function, in part, of the Company's *actual* experience (as compared to forecasts using expectations of the future). Accruals in future years will need to account for actuarial and market investment results in previous years, once they occur. Thus, the accounting process under FASB rules requires an ongoing recalibration

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(...footnote continued)

> could be filed before the expiration date of the four-year freeze because the new rates would not go into effect until the termination of Department's statutory six-month suspension period.

of expense amounts to reflect market and actuarial changes. Like other accrued expenses (e.g., depreciation), the prospective level of pension/PBOP costs is based, in part, on past events without violating any reasonable precept of retroactive ratemaking. This is just as true under the existing base rate treatment for pension/PBOP as it would be under the Company's proposed pension/PBOP adjustment mechanism, and such prospective recovery does not violate the merger's four-year rate freeze.

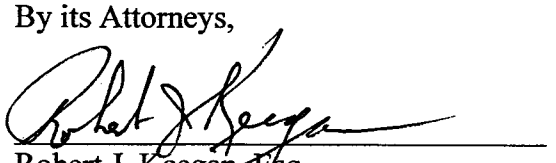
IV. CONCLUSION

For all of the foregoing reasons, the Attorney General has not established a legitimate legal basis for the Department to grant a dismissal with respect to the Company's proposed Pension/PBOP adjustment mechanism. The Company submits that there are many important factual and policy matters at issue in this proceeding that requires denial of the Attorney General's requested relief and allowing the record in this case to be fully developed.

Respectfully submitted,

BOSTON EDISON COMPANY
CAMBRIDGE ELECTRIC LIGHT COMPANY
COMMONWEALTH ELECTRIC COMPANY
NSTAR GAS COMPANY

By its Attorneys,



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Dated: June 12, 2003

Table 1 History of Department Reconciliation Mechanisms

No.	Category of Utility Cost Reconciled	Case Citation
1.	Manufactured Gas Costs – Department approves clause reconciling the cost of coal used to manufacture gas.	Worcester Gas Light Company, 9 P.U.R. 3d 152, at 155 (1955), citing Boston Consolidated Gas Company v. Department of Public Utilities, 321 Mass. 259 (1947).
2.	Electric Fuel Charge – Department approves electric fuel reconciliation mechanism outside of base rates.	Re Electric Fuel Clause Investigation, D.P.U 7357 (1946).
3.	Natural Gas Adjustment Clause – Department approves natural gas reconciliation mechanism outside of base rates.	Worcester Gas Light Company, 9 P.U.R. 3d 152 (1955).
4.	Oil Conservation Adjustment – Department approves reconciliation mechanism for recovery of oil generation conversion to coal.	G.L. c. 164, § 94G1/2 and Massachusetts Electric Company, D.P.U. 805/808 (1981).
5.	Local Tax Increase – Department approves adjustment to base rates to recover additional local tax burden on the company.	Cambridge Electric Light Company, D.P.U. 490 (1981).
6.	Change in Depreciation Accounting – Department allows new rates to reflect FCC Order changing accounting from capitalization to expense treatment.	Capital Recovery, D.P.U. 859 (1982).
7.	Change in Federal Income Tax Rules – Department approves change in base rates to reflect new federal income tax rules on utilities.	Federal Income Tax Rates, D.P.U. 87-21-A at 11 (1987)
8.	Purchase Power Cost Adjustment ("PPCA") – Department approves reconciliation of wholesale purchase power costs in PPCA recovery mechanism.	Massachusetts Electric Company, D.P.U. 17334 (1972).
9.	Conservation Program Costs ("CC" Charge) – Department approves reconciliation of costs associated with delivery of electric conservation measures by utility.	Commonwealth Electric Company, D.P.U. 89-114/90-331/91-80 Phase One, at 169-170 (1991).

No.	Category of Utility Cost Reconciled	Case Citation
10.	Lost Base Revenues ("LBR") – Department approves adjustment for sales erosion associated with C&LM (lost base revenues) to be collected through electric fuel adjustment clause.	Western Massachusetts Electric Company, 90-8D at 7, citing D.P.U. 89-260.
11.	Gas Collaborative Cost – Department approves recovery of Gas Collaborative participation costs of gas utilities through CGAC mechanism.	The Berkshire Gas Company, D.T.E. 98-65 (1998); Colonial Gas Company, D.T.E. 98-64 (1998); Commonwealth Gas Company, D.T.E. 98-63 (1998); North Attleboro Gas Company, D.T.E. 98-61 (1998).
12.	Environmental Response Costs – Department approves recovery of environmental response costs associated with gas manufacturing through Local Distribution Adjustment Clause ("LDAC") mechanism.	Manufactured Gas Waste Generic, D.P.U. 89-161, at 32 (1990).
13.	FERC Order 636 Transition Cost Recovery – Department approves recovery of FERC Order 636 transition costs in LDAC mechanism.	LDC Recovery of FERC Order 636 Transition Costs, D.P.U. 94-104-C (1994).
14.	Gas Company DSM Measures – Department approves recovery of DSM costs in LDAC mechanism.	Bay State Gas Company, D.P.U. 95-104 (1995).
15.	Electric Restructuring Transition Cost – Department approves recovery of electric industry restructuring costs (Access Charge) on a fully reconcilable basis.	Boston Edison Company, D.P.U./D.T.E. 96-23 (1998).
16.	Electric Transmission Cost – Department approves recovery of transmission costs outside of base rates on a fully reconcilable basis.	Boston Edison Company, D.P.U./D.T.E. 96-23 (1998).
17.	DSM Costs – Department allows DSM cost recovery reconciliation to be included in default service rates.	Boston Edison Company/Cambridge Electric Light Company/ Commonwealth Electric Company, D.P.U. 99-19 (1999).

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Boston Edison Company Cambridge Electric Light Company Commonwealth Electric Company NSTAR Gas Company	)	D.T.E. 03-47

OPPOSITION OF BOSTON EDISON COMPANY, CAMBRIDGE ELECTRIC LIGHT COMPANY, COMMONWEALTH ELECTRIC COMPANY AND NSTAR GAS COMPANY TO ATTORNEY GENERAL MOTION TO STAY PROCEEDINGS PENDING RESOLUTION OF THE MOTION TO DISMISS

I. INTRODUCTION

Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company and NSTAR Gas Company (together, "NSTAR" or the "Company") file this Opposition to the Attorney General Motion to Stay Pending Resolution of the Motion to Dismiss, as filed on June 5, 2003 ("Motion to Stay").[1] The Attorney General requests that the Department of Telecommunications and Energy (the "Department") stay the procedural schedule pending the resolution of the Attorney General's Motion to Dismiss, or, in the alternative, re-suspend the effective date of the proposed tariff until October 31, 2003, and revise the procedural schedule to permit full investigation of the Company's filing. Neither a stay of the proceedings nor a change in the suspension date is appropriate.

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[1] The full title of the Attorney General's Motion is "Motion of the Attorney General to Stay the Proceedings Pending Resolution of the Motion to Dismiss or, in the Alternative, to Re-suspend the Effective Date and Revise the Procedural Schedule." For ease of reference, the Motion will be referred to as the "Motion to Stay."

The Attorney General argues that, if the proceedings are not stayed while the motion to dismiss is pending, parties would need to spend additional resources preparing the case to go forward (Motion to Stay at 1). The Company itself, however, has already invested substantial resources in the preparation and advancement of its petition before the Department in a proceeding where the Company, not the Attorney General, is the moving party. Although the Attorney General obviously focuses on his own particular positions in response to the Company's case (i.e., by filing a motion to dismiss), the Company is entitled to move its request for approval forward, without delay, in a manner that is consistent with the Department's now-established investigation and the associated suspension date of August 1, 2003. The Department has rejected similar requests for suspension of procedural schedules pending outstanding motions.

> Parties necessarily and properly focus on their own particular interests in a proceeding. The Department, however, must keep in mind its own obligations: to run its proceedings in accordance with the demands of due process but also to conduct its many investigations with an eye toward management of its entire docket and administrative resources, and toward reasonable procedural expedition and conclusiveness.

NYNEX, *Interlocutory Order on Motions for Clarification of NYNEX, New England Cable Television Association, the Attorney General, and AT&T; and Motion for Stay of New England Cable Television Association*, D.P.U. 94-50, at 15 (1994). See also MCIWorldCom v. NYNEX, D.T.E. 97-116-B at 9 (1999) (Department denies request for stay pending Department review of a motion for reconsideration).

In the alternative, the Attorney General requests the Department to re-suspend the Company's proposed tariff from August 1, 2003 until October 31, 2003, and to revise the procedural schedule accordingly (Motion to Dismiss at 1-2). This result is similarly inappropriate in light of the stated deadline for resolution of the pension/PBOP recovery

mechanism that the Company has been informed by its independent auditors must be followed. NSTAR's independent auditors have informed the Company that it must have a specific rate-recovery mechanism during 2003. The deferral of the schedule would require the Company to file a general rate case and receive rate recovery (e.g., appropriate rate recovery associated with its pension/PBOP expense) by the end of 2003, to avoid the negative impacts on earnings and a large charge to equity. The Attorney General has failed to provide any appropriate reason for such an outcome at this juncture.

Discovery is proceeding quickly, hearings have been scheduled, and this limited tariff filing can and must be resolved in a timely manner.

WHEREFORE, for all of the good and sufficient reasons stated herein, the Company respectfully requests that the Department deny the Attorney General's Motion to Stay.

Respectfully submitted,

BOSTON EDISON COMPANY
CAMBRIDGE ELECTRIC LIGHT COMPANY
COMMONWEALTH ELECTRIC COMPANY
NSTAR GAS COMPANY

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